

REMARKS

In response to the Official Action of July 14, 2005, claim 1 has been amended to correct an error concerning the communication channel recited with respect to the processing means. In particular, the communication channel is previously defined in the means for receiving a control message and, consequently, its reference in the processing means element should be presented with the word "said" rather than the word "a". Claims 46-49 are newly submitted.

Referring now to paragraphs 2 and 3 of the Official Action, it is respectfully submitted that claims 1, 3, 4, 11, 12, 14 and 30 are not unpatentable under 35 U.S.C. §103(a) in view of US patent 6,295,448, Hayes, Jr. et al (hereinafter Hayes)¹ further in view of US patent 5,937,358, Gehrig. With regard to claim 1 and the reliance upon Hayes, the arguments presented at pages 2 and 3 of the Official Action correspond substantially to those presented in the previous Official Action of December 12, 2004. As noted in applicant's previous communication of April 6, 2005, Hayes discloses at column 3, lines 18-23 the following:

"Communication is effectuated in the present invention in a manner such that the infrastructure of the mobile telephone system is never used as an intermediary to carry voice and/or data traffic between the mobile telephones and the other device."

Claims 1 and 14 require means for receiving a control message as a response to an identification message, which identification message must be given using a short distance data transmission connection. Hayes cannot receive a control message as a response to an identification message, which identification message must be given using a short distance data transmission connection. In Hayes, it is disclosed that the mobile telephone system transmits information identifying the communication format to

¹ The Official Action refers to this patent as Haynes, Jr. et al, which is in error.

the mobile telephone and the remote device to which the mobile telephone is to communicate. After this transmission, the mobile telephone transmits a remote control command in a point-to-point communication to the remote device on the assigned communication path using the assigned communication format, both of which were received by the mobile telephone over the mobile telephone system. In Hayes, after assigning a communication path to the mobile telephone and the other device (that is, the short distance data transmission connection assignment), it is no longer possible to use the infrastructure of the mobile telephone system to transmit a control message that must be transmitted using the mobile communication network as required by both claims 1 and 14 of the present application.

Thus, according to the present invention as set forth in claims 1 and 14, the control message is transmitted via the mobile communication network as a response to the identification message transmitted using the short distance data transmission connection. In this way, it is guaranteed that the wireless communication device sending the control message is properly authenticated by the mobile communication network. Thus, the authentication means of the present invention not only identifies the wireless communication device, but also allows or prevents the transmission of said control message by the wireless communication device. In addition, by using the short distance data transmission connection for transmitting at least an identification message to the wireless communication device, it is guaranteed that the wireless communication device controlling the control system is in fact near the control system.

In the rejection of claims 1 and 14, the Official Action states at the paragraph beginning at the bottom of page 3 of the Official Action that Gehrig, in an allegedly analogous art, discloses means for receiving a control message as a response to an identification message via a communication channel from a mobile communication network, wherein the mobile communication network is arranged to set up a first data transmission connection to the wireless communication device for the transmission of the control message (citing column 7, lines 21-51 of Gehrig). Gehrig however is

directed to a radio communication between central and peripheral units of a traffic guidance system which, in particular, is comprised of a master terminal, vehicles and passenger information systems and optical signal units to control the flow of traffic, which communicate with one another via at least two voice and data channels in such a way that messages are transmitted from the central unit to the peripheral units via the first data channel and, correspondingly, from the peripheral units to the central unit via the second data channel (see abstract of Gehrig).

In Gehrig, the vehicles FZ are located within a short-range area and can communicate with each other via a short-range channel SK2. In Gehrig, there is only one short-range channel which is used for transmitting information spontaneously and without delay from the master terminal LST to the vehicles FZ. The communication via the second voice channel SK2 takes place mainly in the short range, for example, between the drivers of the vehicles. The peripheral system units LSA and PAC are not provided for communication on the voice channels SK1 And SK2.

Gehrig does not disclose control messages being transmitted between the vehicles FZ via the master terminal LST nor any kind of identification messages being transmitted using the short-range channel SK2. The request messages in Gehrig are transmitted from the vehicles FZ to the optical signal unit LSA using the data channel DK3 and the request for transmitting a message to the master terminal LST is transmitted using the data channel DK1.

Furthermore, Gehrig does not disclose identification messages being transmitted using the voice channel SK2, but rather the drivers of the vehicles are able to obtain information on e.g. the traffic in their immediate vicinity by listening in on the short-range channel SK2. The second voice channel SK2, as set forth in Gehrig, is not suitable for transmitting identification messages containing data for identification. In addition, the vehicles FZ as disclosed in Gehrig, are not analogous to the control system to be controlled according to the present invention nor are these vehicles analogous to the wireless communication device trying to control the control system as set forth in claims

1 and 14. The vehicles FZ send the request messages to the optical signal unit LSA using a data channel, but the system unit LSA cannot communicate with the vehicles via the short-range channel SK2. Furthermore, a walkie-talkie type of radiotelephone connection is set up for the short-range channel SK2.

In addition, Gehrig does not provide any kind of authentication of a control message. Gehrig relates to the problems associated with monitoring the polling messages transmitted in a data channel common to several peripheral systems. Gehrig does not relate to controlling a control system using a wireless communication device and the authentication of control messages. Therefore, due to the vastly different arts in which Gehrig and Hayes are respectively directed, there would be no motivation to combine the references in the manner as suggested at paragraph 3 of the Official Action.

As set forth in MPEP §2143.01 there are three possible sources for a motivation to combine references; namely, “the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.” As set forth in said section “in determining the propriety of the Patent Office case for obviousness in the first instance, it is necessary to ascertain whether or not the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination or other modification” (citation omitted). As further set forth in said section, the fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness.

In the case of *In Re Sang Su-Lee*, 277 F.3d 1338, 1345-46, 61 USPQ2d 1430, 1435 (Fed. Cir. 2002), the CAFC reiterated that “a showing of a suggestion, teaching, or motivation to combine the prior art references is an essential component of an obviousness holding.” The mere fact that references can be combined does not render the resultant combination obvious unless there

is a “suggestion or motivation in the reference” to combine. *In re Mills*, 916 F.2d 680, 682; 16 USPQ2d 1430, 1432 (Fed. Cir. 1990) *cited at* MPEP § 2143.01 (emphasis added).

Of course, “an express written motivation to combine” need not appear in prior art references. *Ruiz v. A.B. Chance Co.*, 357 F.3d 1270, 1276; 69 USPQ2d 1686, 1690 (Fed. Cir. 2004). However, merely finding motivation to combine prior art references in the nature of the problem to be solved, instead of finding that motivation in the express or implied statements of the prior art, is “particularly relevant with simpler mechanical technologies.” *Id.* Moreover, the motivation shown by the examiner must have existed “before the invention itself, to make the new combination.” *Id.*

“The factual inquiry whether to combine references must be thorough and searching.” *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001). This factual inquiry “cannot be dispensed with.” *In re Lee*, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Also see, e.g., *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 USPQ2d 1456, 1459 (Fed. Cir. 2000) (“a showing of a suggestion, teaching, or motivation to combine the prior art references is an ‘essential component of an obviousness holding’”) (quoting *C.R.Bard, Inc., v. M3 Systems, Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998)); *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (“Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.”); *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998) (there must be some motivation, suggestion, or teaching of the

desirability of making the specific combination that was made by the applicant); In re Fine, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) (“teachings of references can be combined only if there is some suggestion or incentive to do so.”) (emphasis in original) (quoting ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984)).

In the present Official Action, it is merely stated at page 4, line 3 that assertion is made that a person of ordinary skill in the art would be motivated to combine Gehrig and Hayes in the manner as suggested by the Examiner. In fact, the field of the inventions concerning these two references are quite different with Hayes in the field of short distance communication for mobile telephones and with Gehrig in the field of radio communication between central and peripheral units of a traffic guidance system. No indication is presented in the Official Action as to why a person of ordinary skill in the art would be motivated to combine these references and in particular combine them in the manner as suggested by the Examiner.

In summary, the above-mentioned differences between Gehrig and the present invention as claimed show that Gehrig is in fact not an analogous art in relation to the present invention nor in relation to Hayes. Thus, there would be no motivation to combine Gehrig with Hayes in the manner as suggested in the Official Action.

Furthermore, even if Hayes were to be combined with Gehrig in the manner as suggested in the Official Action, the adaptation of the system in Hayes would result in a system wherein after assigning the communication path, that is the short-range channel SK2, to the vehicles FZ of Gehrig, it would not be possible to use the infrastructure of Gehrig to transmit any kind of control messages between the vehicles FZ using the master terminal LST according to the principles of Hayes. Thus, the use of such control messages is not evident from a reading of Gehrig or Hayes.

It is therefore respectfully submitted that claims 1 and 14 are distinguished over Hayes in view of Gehrig. Furthermore, claims 3, 4, 11 and 12 rejected at paragraph 3 of the Official Action are also further distinguished over Hayes in view of Gehrig since they all ultimately depend from amended claim 1.

Regarding the rejection of claim 30, it is stated at page 7 that it is rejected on the same basis as the rejection of claim 11. However, claim 30 depends from claim 16, an independent control system claim that is not specifically rejected at paragraph 3 of the Official Action. Nevertheless, claim 30 is believed to be distinguished over Hayes in view of Gehrig since, as set forth below, independent claim 16 is believed to be distinguished over the cited art which at paragraph 4 of the Official Action is Hayes in view of Gehrig as applied to claim 1, further in view of US patent 5,875,395, Holmes.

Referring now to paragraph 4 of the Official Action, it is therefore respectfully submitted that claims 2, 6, 16-19, 25-29, 35, 42 and 45, as well as 30, are not unpatentable under 35 U.S.C. §103(a) in view of Hayes and Gehrig as applied to claim 1, further in view of Holmes.

With regard to independent claim 16, this claim is similar to control system claim 1 but adds further details concerning the processing means. In particular, it is recited that the processing means are arranged to transmit an acknowledgement message via a communication channel to the mobile communication network and to the wireless communication device, wherein the acknowledgement message contains data on an acceptable key code to be added to a new control message to be transmitted from the wireless communication device. In Hayes, the sending/receiving of an acknowledgement message containing data on an acceptable key code as a response to a control message is not disclosed nor is it possible in the manner required by claim 16; because the control message in claim 16 must be given using a short distance data transmission connection. However, in Hayes, after assigning a communication path (that is the short distance data transmission connection) to the mobile telephone and the other device, it is no longer possible to use the infrastructure of the mobile

telephone system to transmit the acknowledgement message that must be transmitted using the mobile telephone system as required in claim 16 (compare the statements in Hayes that the infrastructure of the mobile telephone system is never used as an intermediary to carry voice and/or data traffic between the mobile telephones or the mobile telephone and the other device - Hayes column 3, lines 18-23).

Gehrig does not disclose acknowledgement messages being transmitted between the vehicles FZ via the master terminal LST, nor any kind of control messages being transmitted using the short-range channel SK2. The peripheral system units LSA and PAC are not provided for communication on the voice channels SK1 and SK2.

In summary, the above-mentioned differences mean that Gehrig is not in an analogous art in relation to the present invention nor in relation to Hayes. Gehrig does not relate to controlling a control system using a wireless communication device and sending key codes to the controlling device. Thus, it is respectfully submitted that there is no motivation to combine Gehrig with Hayes in the manner as suggested at paragraph 4 of the Official Action.

As a result, it is respectfully submitted that, for the reasons presented earlier with regard to claims 1 and 14, as well as those presented immediately above, claim 16 is distinguished over the cited art.

For the reasons presented above with regard to claim 1, it is respectfully submitted that claims 2 and 6 are further distinguished over Gehrig in view of Hayes, further in view of Holmes since these claims ultimately depend from claim 1, which is believed to be distinguished over the cited art.

Similarly, claims 17-19, 25-29, 42 and 45 are believed to be distinguished over Hayes in view of Gehrig, further in view of Holmes due to their ultimate dependency from independent system claim 16.

Claim 35, which is ultimately dependent from claim 1, is also believed to be distinguished over the cited art due to its dependency from claim 1.

Referring now to paragraph 5 of the Official Action, it is respectfully submitted that claims 5, 17, 22-24, 30, 33, 34, 36, 43 and 44 are all believed to be not unpatentable under 35 U.S.C. §103(a) in view of Hayes, further in view of Gehrig, further in view of US patent 5,864,757, Parker, due to their ultimate dependency from independent claims which are believed to be distinguished over the cited art.

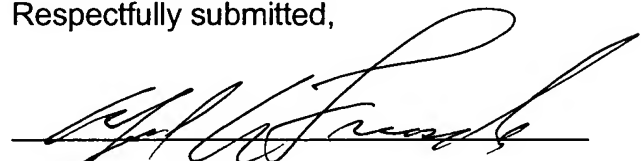
Referring to paragraph 6 of the Official Action, it is also respectfully submitted that claims 8-10, 15, 21, 32, 38, 39, 40 and 41 are further distinguished over the cited art due to their ultimate dependency from independent claims which are believed to be allowable over the cited art.

Finally, newly presented claims 46-49 are all believed to be patentable in view of their ultimate dependency from claims which are believed to be distinguished over the cited art.

In view of the foregoing, it is respectfully submitted that the present application as amended is in condition for allowance and such action is earnestly solicited.

Respectfully submitted,

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